

# European Digital Infrastructure Consortium User Guide

## Disclaimer:

This Guide is aimed at assisting potential applicants. It is provided for information purposes only and its contents are not intended to replace consultation of any applicable legal sources or the necessary advice of a legal expert, where appropriate. Neither the Commission nor any person acting on its behalf can be held responsible for the use made of these guidance notes.

This version of the Guide constitutes an advanced draft, which may be further supplemented or amended following the entry into force of the Decision establishing the Digital Decade Policy Programme 2030.

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## Introduction

Decision (EC) No [XX/2023]<sup>1</sup> establishing the Digital Decade Policy Programme 2030 (hereafter: DDPP Decision) introduces Multi-Country Projects (MCPs), which are large-scale projects supporting the digital transformation of the Union and the achievement of the Digital Decade objectives and targets. MCPs pool the Union's, national and private resources to achieve progress that no Member State could do on its own. For more information on MCPs, please see Section 1.2 below.

The same DDPP Decision creates an implementation mechanism to facilitate the establishment and the operation. It is the European Digital Infrastructure Consortium (EDIC).

An EDIC is a legal entity set up by a decision of the European Commission. It has legal personality and full legal capacity recognised in all EU Member States. The internal structure of an EDIC is flexible and defined in the statutes by its members, while respecting the requirements set out in the DDPP Decision. The liability of the EDIC's members can be limited to their respective contributions.

Commentaries included in this user guide are provided for information purposes only. The guide is not intended to replace consultation of applicable legal sources, including EU and national legislation, or the necessary advice of a legal expert.

We recommend reading the descriptive part of this user guide in its entirety, in particular together with the template the Statutes of the EDIC in Part 2, where guidance that is more technical is provided.

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<sup>1</sup> [Ref. to DDPP decision to be added]

# Part 1

## What is an EDIC?

### 1.1. Legal status

A European Digital Infrastructure Consortium (EDIC) is a legal entity. It has legal personality as from the date on which the Commission decision setting up the EDIC takes effect.

Its legal personality is recognised in all Member States without requiring transposition into national law or any national legal instrument. Member States accord it with the most extensive legal capacity accorded to legal entities.

An EDIC may be recognised by its host country as an international body or organisation for the purpose of the directives on value added tax or excise duties, depending on the composition of the membership of an EDIC (see Section 4.4).

The statutory seat of an EDIC must be located on the territory of a Member State.

An EDIC may conclude contracts with other legal entities.

### 1.2. EDIC as an implementation mechanism for a Multi-Country Project

The principal task of an EDIC is to implement Multi-Country projects in a swift and flexible manner, while remaining open to all Member States throughout the duration of the project, based on the fair and reasonable terms set out in the EDIC's Statutes.

Multi-Country projects (MCPs) are large-scale projects facilitating the digital transformation of the Union. They involve several Member States, and support the achievement of objectives and targets set out in the Path to the Digital Decade policy programme. They will pool EU, national and private resources to achieve progress that no Member State could do on its own.

The purpose and the specific goals of the Multi-Country project implemented by an EDIC must be in line with the purpose and the goals for MCPs as per Article 10 of the DDPP Decision:

1. *The purpose of the Multi-Country Projects shall be to facilitate the achievement of the digital targets.*
2. *Multi-Country Projects shall aim at one or more of the following specific goals:*
  - (a) *improving the cooperation of the Union and of Member States in the achievement of the general objectives of the Digital Decade;*
  - (b) *reinforcing the Union's technological excellence, leadership, innovation and industrial competitiveness in critical technologies, complementary technology combinations, digital products, services and infrastructures that are essential for economic recovery and growth and for the security and safety of individuals;*

- (c) *addressing strategic vulnerabilities and dependencies of the Union along the digital supply chains in order to enhance their resilience;*
- (d) *increasing the availability of and promoting best use of safe digital solutions in areas of public interest and the private sector while respecting the principles of technological neutrality;*
- (e) *contributing to an inclusive and sustainable digital transformation of society and the economy that benefits all citizens and businesses, in particular SMEs, across the Union;*
- (f) *promoting digital skills for citizens through education, training and life-long learning, with focus on fostering a gender balanced participation to education and career opportunities;*

The Annex to the DDPP Decision sets out an indicative list of possible areas of activity in which Multi-Country Projects addressing these specific objectives could be established. The Commission in cooperation with Member States may identify additional MCPs under a procedure described in Article 12 of the DDPP Decision.

An EDIC can be used for establishing new infrastructures and operating them or for operating already existing infrastructures that consider it useful to change their legal structure to become an EDIC. The infrastructures may be single-sited or distributed.

### **1.3. Seat and name**

An EDIC shall have a statutory seat, which shall be located on the territory of a Member State that is a member providing a financial or non-financial contribution. It is recommended that the abbreviation „EDIC“ should be part of the name of the EDIC.

### **1.4. Duration**

An EDIC may be created for an indefinite or for a limited period of time. The duration and the procedure for the winding-up in compliance with Article 20 of the DDPP Decision will be set out in the EDIC statutes.

If it is created for a limited period of time, the statutes may provide for the modalities of its renewal, e.g. decision of the assembly of members with a specific majority, assessment prior to the renewal.

In addition, in order to foster sustainability of the EDIC, the Statutes may provide for a minimum duration of membership (i.e. a member can leave an EDIC after a specific minimum time).

### **1.5. Members and observers**

An EDIC must have at least three Member States as members. Only Member States that provide a financial or non-financial contribution shall be members of EDIC with voting rights.

Following the adoption of a decision setting up an EDIC, other Member States may join as members at any time on fair and reasonable terms specified in the Statutes.

Member States that do not provide a financial nor a non-financial contribution may join EDIC as observers without voting rights, by notifying the EDIC.

Membership of an EDIC may be open to entities other than Member States, which may include inter alia third countries referred to in Art 13.2a of the DDPP Decision, international organizations of European interest, public and private entities, as specified in the Statutes. If this is the case, Member States shall hold jointly the majority of the voting rights in the assembly of members regardless of the amount of contributions from entities other than Member States.

Note: Where appropriate, a Member State participating in a Multi-Country Project may be represented by a region, as regards specific rights or obligations (Article 10.4 of the DDPP Decision).

## **1.6. Liability**

An EDIC shall be liable for its debts.

The financial liability of the members for the debts of the EDIC shall be limited to their respective contributions provided to the EDIC. The members may specify in the Statutes that they will assume a fixed liability above their respective contributions or unlimited liability.

The Union shall not be liable for an EDIC's debts.

## **1.7. Applicable law and jurisdiction**

The setting-up and internal functioning of an EDIC shall be governed:

- (a) by Union law, in particular by the DDPP Decision;
- (b) by the law of the Member State where the EDIC has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in point (a);
- (c) by the Statutes and their implementing rules.

The relationships with external parties will not necessarily be governed by the law of the Member State where the EDIC has its statutory seat, depending on the character of the transaction in question.

Similarly, labour law of each Member State in which an EDIC employs staff will apply to staff employed in that Member State.

Without prejudice to the cases in which the Court of Justice of the European Union has jurisdiction under the Treaties, the law of the Member State where the EDIC has its statutory seat shall determine the competent jurisdiction for the resolution of disputes among the Members in relation to the EDIC, between the members and the EDIC, and between an EDIC and third parties.

## Section 2. How to create an EDIC?

### 2.1. Procedure in a nutshell

Member States applying for the setting-up of an EDIC have to submit an application to the Commission. The application has to be submitted in writing and has to contain all elements indicated in Section 2.2 of this guide.

The Commission will assess the application taking into account the general objectives of the DDPP as spelled out in the Article 2 of the DDPP Decision, as well as the purpose and the specific goals of the Multi-Country projects provided for in Article 10 of the DDPP Decision) and also the practical considerations related to the implementation of the Multi-Country project to be implemented by the EDIC.

On this basis, the Commission will adopt a decision in which it will either set up an EDIC, or reject the application. For more details please consult Section 2.5 of this guide.

The Commission will notify the decision above to the applicants. Where the application is rejected, the decision shall be explained in clear and precise terms to the applicants.

The Commission will publish the decision setting up the EDIC in the Official Journal of the European Union. The Commission will also create a publicly accessible list of the EDICs and update it in a timely manner.

### 2.2. Content of the application

The following is requested in an application for setting up an EDIC:

- a) a request to the Commission to set up the EDIC. It is recommended that the request is based on a template provided in Annex 2.
- b) the proposed Statutes of the EDIC containing at least the elements listed in Article 17(1) of the DDPP Decision. It is recommended that the Statutes are based on a template provided in Annex 3.
- c) a technical description of the Multi-Country project to be implemented by the EDIC – it is recommended that this description should be provided as an annex to the Statutes to simultaneously meet the requirements of Article 17(1)(b) of the DDPP Decision. It is recommended that the technical description refers to the relevant key performance indicators of the Digital Decade, adopted by the Commission in accordance with Article 5 of DDPP Decision against which progress of the EDIC can be benchmarked. It should also include an adequate risk assessment in order to ensure a smooth implementation. Please see Annex V to the Statutes (template included in Annex 3 to this guide).
- d) a declaration by the host Member State whether it recognises the EDIC as an international body within the meaning of Articles 143, point (g) and 151(1), point (b) of Council Directive 2006/112/EC and as international organisation within the meaning of Article



12(1), point (b), of Council Directive 2008/118/EC, as of its setting up. The limits and conditions of the exemptions from VAT and excise duties provided for in those provisions shall be laid down in an agreement between the members of the EDIC and with the host Member State.

### **2.3. Pre-submission advice and the role of the MCP Accelerator (optional)**

To support and coordinate the implementation of Multi-Country Projects, the Commission will assume the role of an MCP Accelerator. In this role, the Commission may give guidance regarding the setting-up of a new European Digital Infrastructure Consortium. It can provide, as appropriate, services and resources and cooperate closely with Member States. Unit D1 (Research Strategy and Programme Coordination) of the Directorate General for Communications Networks, Content and Technology (DG CNECT) is in charge of the MCP Accelerator.

Stakeholders of the future EDIC are encouraged to work well in advance and involve their national authorities when designing the EDIC and preparing the required documents. The future members of an EDIC should prepare and agree on the documents required for the application as listed in Section 2.2). National procedures set up to ensure the agreement and commitment of each member may vary from country to country. For this reason, potential applicants are invited to contact the MCP Accelerator at [XX@ec.europa.eu](mailto:XX@ec.europa.eu) for pre-submission advice.

It is advised that Member States consult with the MCP Accelerator final drafts of all the documents listed in Section 2.2 after they are finalised and agreed by the applicants.

The Commission will review the draft application and will provide comments and suggest modifications if needed to the draft project description and to the Statutes. The Commission invites the applicants to submit the formal request signed by all future members of the EDIC taking into account the comments and suggestions made.

### **2.4. Formal submission of the application**

The applicants submit their signed request to set up the EDIC accompanied by the final version of all the required documents (see Section 2.2). The request must be signed by all applicants. It is recommended that the application and accompanying documents are based on templates provided in Annexes 2 – 4 to this guide.

The application is submitted electronically at the following address: [xx@ec.europa.eu](mailto:xx@ec.europa.eu)

### **2.5. Commission decision establishing an EDIC**

The Commission shall assess the application based on the conditions set out in Article 14(1) of the DDPP Decision. It shall take into account the general objectives of the Digital Decade Policy Programme as set out in Article 2 of the DDPP Decision, the purpose and goals of the Multi-Country projects as provided for in Article 10(1) of the DDPP Decision, as well as practical

considerations related to the implementation of the Multi-Country project to be implemented by the EDIC.

Based on the application request, the Commission seeks the opinion of the Digital Decade Committee and prepares one of the following decisions by means of an implementing act (comitology procedure)<sup>2</sup>:

- (a) setting up the EDIC after it has concluded that the requirements laid down in Articles 13 to 21 of the DDPP Decision are met;
- (b) rejecting the application if it concludes that the requirements laid down in Articles 13 to 21 of the DDPP Decision are not met, including in the absence of the declaration referred to in Article 14(11)(d) of the DDPP Decision. In this case, Member States may still form a consortium by way of an agreement but it shall not carry the name EDIC, nor benefit from the implementation structure laid down in the DDPP Decision.

The decision will be notified to the applicants. Where the application is rejected, the decision will be explained in clear and precise terms to the applicants. The decision setting up the EDIC will be published in the Official Journal of the European Union. The Commission will create a publicly accessible list of the EDICs and update it in a timely manner.

## **2.6. Duration of the procedure**

The estimated duration is up to six months starting from the submission of the formal request to the Commission.

In order to keep the application process as short as possible, while ensuring that all steps of the process are respected, the European Commission acting as an MCP Accelerator will try its best to assist potential applicants at all stages of the preparation of an EDIC.

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<sup>2</sup> For details of the comitology procedure please consult: [Comitology | European Commission \(europa.eu\)](https://ec.europa.eu/comitology/)

## Section 3. Organisation

### 3.1. Membership of the EDIC

The membership of EDIC shall include at least three Member States. Member States who provide a financial or non-financial contribution are members of EDIC with voting rights. Member States that do not provide a financial nor a non-financial contribution may join EDIC as observers without voting rights (see Section 3.4 of this guide).

Membership of an EDIC may be open to entities other than Member States, which may include inter alia third countries referred to in Art 13.2a of the DDPP Decision, international organizations of European interest, public and private entities, as specified in the Statutes. If this is the case, Member States shall hold jointly the majority of the voting rights in the assembly of members regardless of the amount of contributions from entities other than Member States. In addition, the participation of private entities would have consequences to the status of the EDIC as international organisation and corresponding tax exemptions as described in Section 4.4. of this Guide

Further members may join the EDIC after its establishment at any time on fair and reasonable terms specified in the Statutes, as required under Article 15(2) of the DDPP Decision. For this reason and given the nature of the specific goals of the MCPs (Article 10 of the DDPP Decision), it is recommended that the founding Member States should involve all Member States which might become EDIC members early in the process leading to its establishment.

### 3.2. Commitments from the members

The proposed Statutes must include the commitment of the members to make contributions to the EDIC. The contributions should be commensurate with the tasks and objectives described in the Statutes and ensure a sustainable operation of the EDIC. The Statutes should include a provisional budget with the corresponding commitments from the members for the first 2-4years.

Part of the commitments may be in kind. However, there must be sufficient financial contributions to ensure that the EDIC meet the objectives laid down in the Statutes and that the project to be implemented by the EDIC fulfils the requirements set out in the DDPP Decision. It may also include indicatively the complementary financial contributions expected to be covered from an EU Programme.

Once an EDIC is formally established, it may apply for Union funding under the programmes relevant to its objectives and scope of activities, such as Digital Europe Programme, Horizon Europe, the Connecting Europe Facility and others. This may include, as applicable, responding to open and restricted calls for proposals. Under specific conditions, an EDIC can be identified in the relevant work programmes as named beneficiary.

In addition, the Statutes must include the detailed description of the Multi-Country Project, the tasks of Members, if applicable, and indicative timeline, as further specified in Annex V to the template of the Statutes. Annex V should serve as an outline of the implementation strategy,

which, following the creation of an EDIC, should be the basis for the adoption by the EDIC of the implementation strategy described under Section 4.8.

### **3.3. Representing entities**

The DDPP Decision provides that a Member State may be represented by one or more public entities, including regions or private entities with a public service mission, as regards the exercise of specified rights and the discharge of specified obligations as a member of the EDIC.

Private entities with a public service mission: if an entity established under private law is owned by a public sector body or the state, it can be deemed to have a public service mission. If it is not owned by a public sector body, it must be explicitly granted such a mission through a decision by a public sector body. For example, higher education establishments that deliver diplomas recognised by a public authority according to criteria established by the state or perform research with public funding and in accordance with objectives agreed by the state would meet this criterion.

The state which is member or observer of the EDIC appoints and gives a specific mandate to the representing entity according to its own rules. The terms of the representation, including the terms for exercising voting rights, and any change in the designation of the representing entity or in the rights and obligation delegated to it should be communicated to the EDIC. It is advisable that a list of representing entities is attached as an annex to the Statutes.

### **3.4. Voting rights**

Member States must hold jointly the majority of the voting rights in the Assembly of Members, which is the decision-making body of an EDIC where all members are represented.

This requirement must be met at all times during the lifetime of an EDIC. If, due to modifications in the membership of an EDIC, Member States do not hold jointly the majority of the voting rights anymore, modifications in the share of voting rights need to be made to ensure that the EDIC complies with this requirement.

The requirement refers to the general distribution of the votes in the Assembly of Members. A meeting where, due to absences, Member States do not hold jointly the majority of the voting rights would not be irregular as long as the conditions provided for by the Statutes, such as the quorum, are met.

The Statutes provide for the distribution of voting rights, e.g. each member has one vote or the voting rights are determined in proportion to the respective contributions or any other fair, reasonable and efficient mechanism.

### **3.5. Governance**

When designing the governance structure and procedures, the members should clearly define the tasks and responsibilities of each body and take into account the need for efficient implementation.

The statutes should provide for the basic rules, in particular on quorum or majority rules for the decisions of the Assembly of Members. Further rules may be adopted by the Assembly of Members in the implementing rules.

*Mandatory elements:*

The minimum governing bodies required by the DDPP Decision are an Assembly of Members and a Director.

The Assembly of Members is the body having full decision-making powers. It adopts in particular the annual budget, the annual work plan and the implementing rules which complement the Statutes.

The Director is appointed by the Assembly of Members. The Director is the executive body and legal representative of the EDIC.

*Non-mandatory elements:*

The EDIC is free to choose its own internal organisation. Advisory bodies may be set up in the Statutes. Two types of advisory bodies are proposed in the template of the Statutes: a Strategic Orientation Committee and an Advisory Board.

The Strategic Orientation Committee would gather representatives of different categories of members and would provide a more flexible platform than the Assembly of Members for discussion of matters of strategic importance to the implementation of the EDIC's tasks. Its strategic guidance to the Director would be non-binding, unless the Assembly of Members decides to formally approve it.

The Advisory Board is envisaged to provide experts and input from organisations that do not qualify to be members, in particular user communities.

The Statutes may provide for the creation of any other bodies as necessary for the implementation of the tasks of a given EDIC. In this context, it is advised that, to prevent complications in the governance structure, such other bodies should preferably not have decision-making competences.

### **3.6. Legal representation**

According to the DDPP Decision, a Director, appointed by the Assembly of Members, is the legal representative of the EDIC.

## Section 4. Implementation

### 4.1. Task and activities

According to the DDPP Decision, the purpose of an EDIC is to implement a Multi-Country Project. As a consequence, tasks and activities will differ between EDICs. These tasks and activities should be reflected in a technical description of the underlying MCP, which should be annexed to the Statutes (see template of Annex V to the Statutes).

### 4.2. Economic and non-economic activities

The DDPP Decision does not provide the rules regarding economic activities that can be conducted by an EDIC. In the absence of any limitations, it should be considered that an EDIC may carry out both non-economic and economic activities, as long as they are linked to the implementation of the MCP. If an economic activity becomes successful enough to go beyond the implementation of an MCP, an EDIC may consider creating a spin-off company for example.

For legal clarity, the Statutes should state whether or not the EDIC in question will carry out economic activities. These activities should then be clearly identified during the implementation of an EDIC.

In interpreting the notion of ‘non-economic’, the Commission relies on the definition of ‘economic activities’ as developed on the basis of the case-law of the Court of Justice of the European Union in competition matters.

An economic activity consists of offering goods and/or services on a given market<sup>3</sup>. The fact that an activity is carried out by a non-profit operator is not enough to avoid classification as an economic activity. Conversely, the fact that a fee might be charged does not in itself render the activity ‘economic’ if the access and related services do not correspond to what the market can provide. Whether a market exists for a certain service depends on the organisation of the activity by the Member State concerned and can therefore differ from one Member State to another. It may also change over time due to policy decisions on the way in which the activity is organised or as a result of market developments.

### 4.3. Recording of the costs and revenues of economic activities; State aid

EU State aid rules apply to the public funding granted from Member State resources if that funding is for an EDIC’s economic activity or benefits this activity, and if all other cumulative conditions for the presence of State aid, set out in Article 107 (1) TFEU, are met. This applies to public funding in any form whatsoever, including cash and in-kind contributions, and, where

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<sup>3</sup> Case 118/85 Commission v Italy [1987] ECR 2599, paragraph 7; Case C-35/96 Commission v Italy [1998] ECR I-3851, paragraph 36; and Pavlov.

Member States, as members of an EDIC, cover debts beyond their respective contributions provided to the EDIC.

If an EDIC carries out both economic and non-economic activities, EU State aid rules only apply to public funding that is granted for the EDIC's economic activities or benefits these activities. This however requires that the two types of activities and their costs, funding and revenues can be clearly separated so that cross-subsidisation of the economic activity is effectively avoided.

Thus, an EDIC must record the costs and revenues of its economic activities separately and charge market prices for them. If such prices cannot be ascertained, it must charge full costs plus a reasonable margin. This margin may be the margin established by reference to margins commonly applied by undertakings for the same activity.

#### **4.4. Status of an EDIC as international organisation and corresponding tax exemptions**

Depending on the composition of the members of an EDIC<sup>4</sup>, the host Member State will declare whether it recognises the EDIC as an international body within the meaning of Articles 143, point (g) and 151(1), point (b) of Council Directive 2006/112/EC and as international organisation within the meaning of Article 12(1), point (b), of Council Directive 2008/118/EC, as of its setting up for the purposes of the directives on value added tax<sup>5</sup> (VAT) and excise duties<sup>6</sup>.

If an EDIC is recognised as an international organisation, according to both directives, VAT and excise duty exemptions may apply to goods or services acquired by the EDIC or its members for the official use of an EDIC subject to the limits and conditions set out by the agreement between the members of the EDIC or by headquarters agreements. The agreement should specify the implementation of the exemptions, such as the recording and recovery of the tax paid.

According to the usual limits and conditions, the exemption is limited to goods and services which are for the exclusive and official use of the EDIC, are wholly paid and procured by the EDIC and exceed a certain value which is indicated in the statutes or in the agreement. It only applies to non-economic activities.

Subject to limits and conditions laid down in the Statutes or in another agreement, exemptions apply to goods or services regardless of whether these are local purchases or purchases made within the European Union and to goods imported from third countries.

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<sup>4</sup> It is indicated that an EDIC would normally meet the criteria of the above-mentioned directives to be recognised as an international body and as an international organisation unless its membership includes private entities.

<sup>5</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1.

<sup>6</sup> Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/112/EEC, OJ L 9, 14.1.2009, p. 12.

The limits and conditions may be agreed either as a part of the Statutes or in a separate agreement among the members or in the Statutes. The latter approach is recommended as it provides for more transparency since the Statutes are publicly and easily available.

The limits and conditions may also be set by the host Member State.

EDICs which are not recognised as international organisations will not benefit from the tax exemptions described above. It will depend on the national tax laws of the Member States in which the EDICs are economically active whether they are subject to tax on their income from economic activities.

#### 4.5. The participation of private entities

##### Private entities as members of an EDIC:

Some EDICs will involve private entities as members. The participation of these may be particularly advantageous for EDICs that are designed to operate close to the market as private entities may help commercialise and adopt EDICs' results by European industry.

The participation of private entities raise nevertheless important issues which should be appropriately addressed. For this reason, if the applicant Member States consider such participation, they should flag this to the MCP Accelerator early in the process.

The following issues related to the participation of private entities require particular attention:

- EDIC application and conditions for membership: In accordance with Article 12(1) of the DDPP Decision, only Member States sign an application to the Commission to set up an EDIC. If specific private entities are intended to be members of an EDIC, this should be agreed in advance between the applicant Member States and such entities and indicated in the Statutes. Alternatively, the Statutes may include the provisions on future participation of private entities. These provisions may leave a large margin of discretion to the Assembly of Members in accepting new members, or conversely, may limit the participation to specific categories of private entities or even to named entities.
- Status of an EDIC as an international organization and corresponding tax treatment: the participation of private entities will have to be taken into consideration by host Member State when declaring whether it recognize a given EDIC as an international organization and an international body, with important implications to its tax treatment, as explained in more detail in Section 4.4 of this guide.
- Voting: as explained in Section 3.4 of this guide, Member States must collectively hold the majority of voting rights regardless of the amount of the financial and non-financial contribution provided by private entities and other members of an EDIC which are not Member States.
- Economic activities: it is likely that an EDIC which involves private entities as members would be involved in at least some economic activities. In this context, it is particularly important to consider all the elements discussed in Section 4.2.



- State aid: in addition to general State aid considerations included in Section 4.3, the participation of private entities in an EDIC may raise State aid issues related e.g. to the ownership of EDICs' result (where economic advantage conferred to participating private entities may be considered as State aid). These issues typically would need to be addressed on a case-by-case basis.

*Other private entities participating in the implementation of an EDIC:*

For some EDICs private entities might participate in the implementation of the EDIC, while not being Members of the EDIC.

This could in particular be the case for complex MCPs, whereby an EDIC would be formed with the membership limited to Member States and a separate implementation consortium would be created as an entity separate from the EDIC, involving both public and private entities.

A cooperation agreement would then be signed between the EDIC and the implementation consortium detailing the role of both entities in the implementation of the MCP, respecting the principles of fairness, openness and transparency.

Please see Section 4.9 of this guide for further details.

## **4.6 Policies**

It is strongly advised that the Statutes should contain the following sets of rules, commonly referred to as „policies“:

- access policy for users;
- dissemination policy;
- intellectual property rights policy;
- employment policy, including equal opportunities;
- procurement policy;
- data policy.

The Statutes may also identify other policies, as relevant to a given EDIC.

The Statutes should contain the essential provisions regarding the above-mentioned policies, which may be completed by detailed provisions included in the implementing rules or other internal documents adopted by the EDIC.

Regarding access policy, the DDPP Decision stipulates in Article 11(4) of the DDPP Decision that private contributions, in particular should support, where relevant, the open access to results and reuse in the interest of individuals and businesses in the Union.

As regards procurement policy, Directive on public procurement<sup>7</sup> as implemented in national law applies as a default. However, if the EDIC is recognised an international organisation within the meaning of the public procurement directive, it may instead choose to adopt its own procurement policy respecting the principles of transparency, non-discrimination and competition. Such procurement rules should be provided for in the Statutes and may be completed by the implementing rules or other internal documents. It is recommended that the specific procurement rules of an EDIC be made publicly available.

#### **4.7 Budget**

Members of the EDIC are under obligation to make contributions to the budget in accordance with modalities provided for in the Statutes. The annual budget of an EDIC should be adopted by the Assembly of Members.

The budget should comply with the EU law and the law of the host Member State, i.a. regarding preparation, filing, auditing and publication of accounts.

In addition, the EDIC should produce an annual financial report. This report should be approved by the Assembly of Members and transmitted to the Commission. This report shall be made publicly available.

#### **4.8 Implementation strategy**

In order to streamline the acuties of an EDIC, it is strongly recommended that an EDIC should have a comprehensive implementation strategy.

It is further recommended that the detailed description of the MCP included in Annex V to the template Statutes of the EDIC should serve as an outline of the implementation strategy.

Following the creation of the EDIC and based on Annex V serving as the outline, the implementation strategy should then be drafted by the Director and adopted by the Assembly of Members.

Specific elements of such strategy should be decided by Members, but it is recommended that the implementation strategy should involve at least the following elements:

- A detailed description of actions and a timeline for their implementation. This description should be an operative document, based on the description of the MCP implemented by a given EDIC and annexed to the Statutes.
- Corresponding to the actions, tasks, roles and responsibilities of members and, if applicable, observers of the EDIC. This appears particularly important for constructive and efficient cooperation in the implementation of the EDIC.

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<sup>7</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

- Milestones targets and deliverables.
- Key performance indicators (KPIs). These indicators should to be aligned, whenever possible, to KPIs adopted in accordance with the DDPP Decision – but should also include, whenever considered necessary, KPIs specific to a given MCP.
- Risk assessment, if necessary with appropriate mitigation measures.
- Implementation modalities, as described in Section 4.9. below.

The implementation strategy should be a living document For this reason, it should not be annexed to the Statutes but rather, similar to the budget, should be adopted separately by the Assembly of Members so that it can be amended whenever necessary without triggering a more formal procedure for the amendment of the Statutes.

The implementation strategy should be reviewed at least once per year by the Assembly of Members, based on Director's report. The same report should feed into the overall implementation reporting by the EDIC to the Commission referred to in Section 4.12 of this guide.

#### 4.9. Implementation modalities

Depending on the nature of the MCP to be implemented by the EDIC, on the stages of the EDIC infrastructure project and specific tasks to be undertaken, an EDIC can be structured and subsequently operated under various implementation modalities, which will primarily need to be developed on a case-by-case basis. Some likely scenarios may include the following:

- For some MCPs, the participation in the EDIC may be restricted to Member States. The EDIC would then rely to a large extent on procuring goods and services necessary to implement the MCP.
- Other MCPs may rely, to a various degree, on the procurement for acquiring IT tools / infrastructure and specific services required to run an EDIC. It may also be the case that the participation in such EDICs would be open to private entities (as well as public entities other than MS), which would be expected to provide the EDIC with the capacity of implementing the MCP mostly directly.
- For more complex MCPs, in particular if their principal objective is the development of infrastructure, that involves R&I and other capacity development, and which cannot be easily structured to fit the implementation modalities described above, the participation into an EDIC may be restricted to Member States. Then, either before or after the creation of an EDIC, **an implementation consortium** could be formed (under fair, open and transparent procedures) as an entity separate from the EDIC, involving both public and private entities. A cooperation agreement would be signed between the EDIC and the implementation consortium detailing the role of both entities in the implementation of the MCP.

It should be emphasized that the above constitutes only examples of the implementation modalities that are non-binding for Member States who wish to structure the implementation of an MCP via an EDIC in any other efficient and legally permissible manner.

Finally, for each EDIC, the implementation modalities should be outlined in Annex V and then described in detail in the implementation strategy, as required under Article 19 of the template Statutes.

#### **4.10. In-kind contributions**

The Statutes may provide for contributions to be made in cash or in kind. The Statutes should lay down the procedure for the Assembly of Members to decide on in-kind contributions and to include them in the EDIC budget. They should also define the procedure for assessing the value of in-kind contributions.

#### **4.11. Liability and insurance**

According to the DDPP Decision, an EDIC is liable for its debts. It has no immunity from seizure of its assets in case of forced recovery of debts or from insolvency proceedings. Proceedings are governed by the law of the statutory seat.

The DDPP Decision states that the financial liability of the members for the debts of the EDIC is limited to their respective contributions provided to the EDIC. This includes financial and in-kind contributions which are paid, provided or promised in a legally binding way.

The Statutes may also provide for liability which exceeds the contributions provided by each member or for unlimited liability.

If the financial liability of its members is not unlimited, it is advisable that the EDIC should take appropriate insurance to cover the risks of the activities which are under its responsibility.

#### **4.12. Reporting and control**

An EDIC should produce an annual activity report outlining the progress on the Multi-Country Project implemented by the EDIC. The report should also contain technical description of activities of the EDIC, and an annual financial report (as to the latter – please see above). The report should be approved by the Assembly of Members and transmitted to the Commission. This report should be made publicly available.

An EDIC or the Member States concerned should inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of the tasks of the EDIC or to hinder the EDIC from fulfilling the requirements laid down in the DDPP Decision.

#### **4.13. Winding up**

If the Statutes provide for a limited duration, the EDIC is wound up at the end of this period unless its members decide to extend it according to the provisions of the Statutes.

In compliance with the Statutes, the Assembly of Members may also decide to terminate an EDIC. The Statutes should include the procedure to be applied in the case of winding up, e.g., where applicable, the possibility for the Assembly of Members to transfer the EDIC activities to another legal entity, the appointment of liquidators, the rules to apportion assets.

#### **4.14. Amendments to the Statutes**

##### *Amendment of non-essential elements of the Statutes:*

The Assembly of Members adopts amendments to the Statutes in accordance with a procedure that should be described in the Statutes and which may involve e.g. qualified majority voting.

Amendments concerning such non-essential elements of the Statutes are submitted by the EDIC to the Commission. Within 60 days from the submission, the Commission may raise an objection to the proposed amendment, giving reasons why the amendment does not comply with the requirements of the DDPP Decision.

The proposed amendment takes effect:

- on expiry of the 60-day period for objecting; or
- when the Commission has waived the period for objecting; or
- when the Commission has lifted its objections.

##### *Amendments concerning essential elements of the Statutes:*

In turn, an amendment of essential elements of the Statutes, as set out in Article 17(2) of the DDPP Decision requires the same procedure as for the creation of the EDIC: the Commission assesses the proposed amendment in line with the requirements of the DDPP Decision, obtains the opinion from the relevant comitology committee and prepares the decision amending the decision setting up the EDIC. The amendment takes effect on the date on which the Commission decision enters into force.

##### *Other considerations:*

Irrespective of the type of procedure followed, after an amendment has entered into force, the EDIC must make a consolidated version of the Statutes available on its website.

Amendments to annexes to the Statutes follow the same procedure as amendments to the Statutes. However, in order to avoid unnecessary procedure when the modifications only consist in updating the annexes, such as updating the list of members, it is recommended to provide in the Statutes that those elements of the annex can be updated by the EDIC, e.g. by the Director.

## Part 2

# The Digital Decade Policy Programme (DDPP) Decision

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the 2030 Policy Programme “Path to the Digital Decade”

(Text with EEA relevance)



DDPP PE 50.22  
2021.0293.pdf

[this will be replaced by a link to EurLex when the Decision is published]

## Part 3

# Model application for setting up an EDIC

### Application for the setting-up of the {XXX} EDIC as a European Digital Infrastructure Consortium (EDIC)

All members of the future EDIC having agreed to the documents listed below,

*[name of the host Member State]*

*[name of Member State 2]*

*[name of Member State 3] etc.*

hereby request the European Commission to set-up the *[full name of the proposed EDIC]* as an EDIC with the statutes attached hereto.

For the Government of *[name of the host Member State]*

*(Signature)*

For the Government of *[name of Member State 2]*

*(Signature)*

For the Government of *[name of Member State 3] etc*

#### Annexes:

- The proposed Statutes of the EDIC;
- A technical description of the Multi-Country project to be implemented by the EDIC;
- A declaration by the host Member State whether it recognises the EDIC as an international body within the meaning of Articles 143, point (g) and 151(1), point (b) of Council Directive 2006/112/EC20 and as international organisation within the meaning of Article 12(1), point (b), of Council Directive 2008/118/EC21, as of its setting up.

## Part 4

### Template for the statutes of an EDIC, with annexes (i) – (v)

This template is proposed to Member States interested in creating a European Digital Infrastructure Consortium (EDIC) in order to facilitate their internal negotiations and the application process. It serves as a guidance document and does not bind Member States in any manner. The text included in the template should be interpreted as follows:

- Standard text (no bold, no italics) – advised text with no alternatives provided
- OPTION [1] italics – advised options
- *{italics, curly bracket}* – text to be filled in
- [Italics, square brackets, blue] – Commission explanation / guidance

## Statutes of {name} EDIC

### CHAPTER 1

#### GENERAL PROVISIONS

##### *Article 1*

##### **Definitions**

For the purposes of these Statutes, the following definitions shall apply:

- (1) ‘...’ means ...;
- (2) ‘...’ means ....

*[please insert definitions that you consider necessary in the context of specific EDIC]*

##### *Article 2*

##### **Name, seat, [location] and working language**

1. “{please insert name of the Multi Country Project or of its part / component} shall be implemented by a European Digital Infrastructure Consortium (EDIC) under a Decision of



the European Parliament and of the Council establishing the 2030 Policy Programme 'Path to the Digital Decade' (hereafter: the DDPP Decision).

2. The name of the EDIC referred to in paragraph (1) shall be ‘{full name} EDIC’, hereafter referred to as {name} EDIC. *[in place of {name} please insert an acronym or abbreviation of the full name]*
3. {name} EDIC shall have its statutory seat in {Member State selected by the applicants}.
4. *[OPTIONAL: {name} EDIC facilities shall be located in {name} EDIC member countries, without prejudice to the right of {name} EDIC to establish additional facilities and conduct operation in other countries.]*
5. The working language of {name} EDIC shall be {English}.

### Article 3

#### Tasks and activities

1. The task of {name} EDIC shall be to implement {name of the Multi Country Project or of its part / component}. In pursuance of this principal task, {name} EDIC shall {insert brief description of specific tasks}
2. For the purposes of paragraph 1 {name} EDIC shall carry out the following activities:
  - (a) {define activity}
  - (b) {...}
  - (c) {...}
  - (d) any other related action necessary to achieve its aim.

[OPTION 1: {name} EDIC shall pursue its tasks on a non-economic basis.]

*[OPTION 2: {name} EDIC, in addition to its tasks pursued on a non-economic basis, may carry out economic activities, provided that they are related to its principal task.]*

*[The choice of OPTION 2 may necessitate more in-depth state aid assessment of the planned EDIC]*

## CHAPTER 2

### MEMBERSHIP

#### Article 4

#### Membership and representing entity

1. The following entities may become members of {name} EDIC or may become observers of {name} EDIC without voting rights:
  - (a) *Member States of the Union;*
  - (b) *[OPTIONAL: Regions of the [OPTIONAL: participating] Member States]*

- (c) *[Other public entities established in [OPTIONAL: participating] Member States]*
  - (d) *[OPTIONAL: Third countries if associated to a directly managed Union programme that supports digital transformation of the Union, and where this participation is necessary to facilitate the achievement of the digital targets of the Union and of the Member States;]*
  - (e) *[OPTIONAL: International organisations of European interest;]*
  - (f) *[OPTIONAL: Private entities]*
  - (g) *[other categories may be added if relevant for the EDIC]*
2. Conditions for becoming a member or an observer are set out in Article 5 of these Statutes.
  3. Membership of {name} EDIC must include at least three Member States.
  4. Any Member State which is a member or observer may be represented by one or more public entities, including regions or private entities with a public service mission, as regards the exercise of specified rights and the discharge of specified obligations as a member of the {name} EDIC.
  5. Each member or observer shall inform the Assembly of Members of the entity representing it, and of any change of that representing entity, of the specific rights and obligations that have been delegated to this entity, or of any other relevant change in its representation. This obligation shall also apply if Member State's being a member of {name} EDIC delegates the exercise of specified rights and the discharge of specified obligations as a member of the EDIC to entities referred to in Article 13(2) of the DDPP Decision.
  6. The members and observers of {name} EDIC and their representing entities are listed in Annex II. Annex II shall be kept up to date by EDIC Director.

#### *Article 5*

#### **Conditions for becoming a member or an observer**

1. Entities referred to in Article 4(1) of these Statutes willing to become members of {name} EDIC shall submit a written application to the Chair of the Assembly of Members. That application shall describe how the entity will contribute to {name} EDIC tasks and activities described in Article 3 of these Statutes and how it will fulfil obligations referred to in Articles 7 of these Statutes.
2. *[OPTIONAL: Following the receipt of the application referred to in paragraph (1) the Chair shall instruct the Director to negotiate Membership Agreement with the candidate entity. The Director shall then present to the Assembly of Members the draft Membership Agreement.]*
3. The admission of the entities as new members or as observers shall be subject to the approval by the Assembly of Members.
4. Entities referred to in Article 4(1) of these Statutes who are willing to contribute to {name} EDIC, but are not yet in a position to join as members, may apply for observer status, subject to the procedure described in paragraphs (1) – (2).
5. Applicants shall be admitted as observers for a {xxx year period} maximum. {Observers may reapply once for extension of observer status}. {In exceptional cases} the Assembly of Members may accept further extension of observer status}.

#### *Article 6*

## **Withdrawal of a member or an observer and termination of membership or observer status**

1. *[OPTIONAL: Within the first {xxx} years of the establishment of {name} EDIC no member may withdraw unless the membership has been entered into for a specified shorter period.]*
2. *[OPTIONAL: After the first {xxx} years of the establishment of {name} EDIC a member may withdraw at the end of a financial year, following a request submitted {xxx} months prior to the withdrawal].*
3. Observers may withdraw at any time, by notifying in writing [*OPTION 1: the Chair of the Assembly of Members* *OPTION 2: the Director*].
4. Members shall fulfil their financial obligations before their withdrawal becomes effective.
5. Members and observers shall fulfil their non-financial obligations before their withdrawal, without prejudice to non-financial obligations which shall continue to apply following the withdrawal, including *[please insert as needed, e.g. confidentiality obligations]*.
6. The Assembly of Members may terminate membership or observer status if the following conditions are met:
  - (a) the member or observer is in serious breach of one or more of its obligations under these statutes;
  - (b) the Chair of the Assembly of Members has sent the member or observer a notice of the breach in writing;
  - (c) the member or observer has failed to rectify the breach within {xxx} months after it has received notice referred to in point (b).
7. The member or observer referred to in paragraph 5 shall have the right to explain its position to the Assembly of Members before the Assembly of Members makes any decision on the issue.

## **CHAPTER 3**

### **RIGHTS AND OBLIGATIONS OF THE MEMBERS AND OBSERVERS**

#### *Article 7*

#### **Members**

1. Rights of members shall include:
  - (a) the right to participate in and vote at the Assembly of Members;
  - (b) the right to appoint one or more representing entities in accordance with Article 4 of the Statutes;
  - (c) the right to benefit and exploits the results obtained by {name} EDIC, *[including intellectual property rights]* to the extent described in Articles 10, 22 and 25 of the Statutes
  - (d) the right to participate in {name} EDIC events, such as workshops, conferences, training courses;

- (e) the support from {name} EDIC in developing {if relevant, list possible services provided by EDIC to members} relevant systems, processes and services;
- (f) [...] *[if any, please list any additional members' rights that are relevant for the EDIC in question]*
- (g) *[OPTIONAL: Rights described in point (c) (d) and (e) shall also apply to member's user communities.]*

2. Each member shall:

- (a) provide the annual [*financial*] [*and/or*] [*non-financial*] contribution in accordance with Article (9);
- (b) appoint a representing entity (entities) in accordance with Article (4) of the Statutes;
- (c) support and promote the work of {name} EDIC.
- (d) protect confidential information of {name} EDIC
- (e) *[OPTIONAL: promote the adoption of relevant standards;]*
- (f) *[OPTIONAL: provide the necessary technical infrastructure;]*
- (g) *[OPTIONAL: promote uptake of {name} EDIC services, infrastructure and other resources [please customise as you see fit] among relevant user and gather user feedback;]*
- (h) *[OPTIONAL: facilitate the integration of {name} EDIC services, infrastructure and other resources]*
- (i) [...] *[please add any other obligations as relevant]*
- (j) acting in good faith, protect other legitimate interests of an EDIC, beyond the points listed above

## Article 8

### Observers

1. Rights of observers shall include: {list of activities to which members are entitled to}:

- (a) the right to attend the Assembly of Members without a vote;
- (b) the rights described in Article 8

2. Each observer shall:

- (a) appoint a representing entity (entities) in accordance with Article 4;
- (b) support and promote the work of {name} EDIC.
- (c) protect confidential information of {name} EDIC
- (d) *[OPTIONAL: promote the adoption of relevant standards;]*
- (e) *[OPTIONAL: provide the necessary technical infrastructure;]*
- (f) *[OPTIONAL: promote uptake of {name} EDIC services, infrastructure and other resources [please customise as you see fit] among relevant user and gather user feedback;]*
- (g) *[OPTIONAL: facilitate the integration of {name} EDIC services, infrastructure and other resources]*
- (h) [...] *[please add any other obligations as relevant]*

- (i) acting in good faith, protect other legitimate interests of an EDIC, beyond the points listed above

## Article 9

### Contributions

1. Contributions to {...} EDIC shall be provided in accordance with Annex [III].]

[OPTIONAL: 2. Any changes affecting the members' or permanent observers' contributions shall be adopted by the General Assembly according to Article 10(9) of the Statutes.]

*[In view of potential complexity of the rules regarding contributions and potential need for amendments e.g. in case of new members joining the EDIC, it is proposed that contributions should be provided in the annex. As an alternative, provisions may be included in this article.]*

## CHAPTER 4

### GOVERNANCE

#### Article 10

#### Assembly of Members

1. The Assembly of Members shall be the governing body of {name} EDIC and shall be composed of representatives of the members and observers of {name} EDIC.
2. Each member shall nominate {one-two} official representatives. {Additionally each member may bring experts to the meeting}. {Each delegation may consist of up to xx persons, but shall carry one single vote}.
3. [OPTION 1. Each member shall have voting rights calculated in proportion to its financial contribution. [OPTION 2. Each member shall have one indivisible vote] [OPTION 3. Voting rights of members shall be as provided in Annex II.]  
*[Option 3 is proposed for more complex methods of calculating voting rights.]*
4. Member States shall hold jointly the majority of the voting rights in the Assembly of Members regardless of the amount of contributions from entities other than Member States. The Assembly of Members shall determine by procedure referred to in Article 30(1) any modification of voting rights that are necessary to ensure that {name} EDIC complies at all times with that requirement.
5. The Assembly of Members shall meet at least once a year, and shall be responsible for the overall direction and supervision of {name} EDIC. The Assembly of Members shall:
  - (a) appoint the Director,
  - (b) adopt the annual budget,
  - (c) approve the admission of new members/ observers, subject to provisions of Article 5,
  - (d) adopt the implementing rules,
  - (e) adopt decisions on contributions,
  - (f) [OPTIONAL: create advisory bodies if deemed necessary],
  - (g) [OPTIONAL: appoint the members of advisory bodies],

- (h) adopt an implementation strategy in order with Article 19;
  - (i) decide on any other matters that are necessary to fulfil the task of {name} EDIC.
6. The meetings of the Assembly of Members shall be convened by the {Chair}. A meeting of the Assembly of Members may be requested by at least {percentage of contributions/number of members or a combination} of the members or by the Director.
  7. The Assembly of Members shall elect a Chair and Vice-chair. The Chair and Vice-chair shall be elected for a {xxx} year term, {renewable once/twice/non-renewable}. The Vice-chair shall substitute the Chair in his/her absence and in case of conflict of interest.
  8. A quorum {percentage of contributions/number of members or a combination} shall be required for having a valid Assembly of Members meeting. If the quorum is not met, a second meeting shall be convened within {insert number} calendar days following a new invitation, with the same agenda. In the second meeting, the quorum shall be considered met if {percentage of contributions/number of members or a combination} of members are present.  
*[please note that different methods and different figures may be provided for calculating of the thresholds referred to in paragraphs (5) and (7).]*
  9. The decisions shall require simple majority of votes cast, except of decisions referred to in point [10] below.
  10. The following decisions shall require {specific majority rule, e.g. two thirds} of the votes cast {of the members present}:
    - (a) amending the statutes of {name} EDIC; as further specified in Article 30;
    - (b) termination of {name} EDIC;
    - (c) termination of membership or observer status;
    - (d) suspension or dismissal of the Director;
    - (e) {decisions related to the amount or calculation of contributions};
    - (f) {if applicable: add other categories of votes that require qualified majority}.*[It is suggested that qualified majority voting should only be required for either decisions of particular importance (e.g. termination of an EDIC) or to protect legitimate interests of members.]*
  11. The Commission may attend the meetings of the Assembly of Members at its discretion. The Commission shall have a veto right on the decisions of the Assembly related to actions financed under centrally-managed Union programmes
  12. The Director shall publish decisions of the Assembly of Members on {name} EDIC website within 15 days of their adoption.

## Article 11

### Director

1. The Assembly of Members shall appoint the Director of {name} EDIC in accordance with a procedure adopted by the Assembly of Members. The term for the Director shall be {xxx} years, {OPTION 1 [renewable] OPTION 2 [non-renewable]}.
2. The Director shall be the legal representative of {name} EDIC.
3. The Director shall carry out the day-to-day management of {name} EDIC. The Director shall be responsible for the implementation of the decisions by the Assembly of Members.

## Article 12

### **[OPTIONAL: Strategic Orientation Committee]**

1. *The {Committee} shall support the Assembly of Members and Director in the implementation of their tasks.*
2. *The {Committee} shall consist of {representatives of differing categories of Members, as defined in Article 4 appointed by the Assembly of Members.*
3. *The Chair of the Strategic Orientation Committee shall be [OPTION 1 {appointed by xxx}] ]OPTION 2 {elected among its members}}]. The Rules of Procedure of the Strategic Orientation Committee shall be adopted by the Assembly of Members.*
4. *The Chair of the Committee may invite experts to the meetings of the Committee, or otherwise seek expert advice as needed to support the works of the Committee.*
5. *The Strategic Orientation Committee shall adopt [annual or multi-annual] strategic orientations for the implementation of the {name} EDIC. The Strategic Orientation Committee may also adopt resolutions providing strategic or political advice for the implementation of the {name} EDIC.*
6. *The Chair of the Strategic Orientation Committee shall submit the strategic orientations and resolutions referred to in paragraph (5) to the Assembly of Members. They shall not be binding unless approved by the Assembly of Members acting in accordance with Article (9).*

*[The purpose of this optional Strategic Orientation Committee would be to provide a forum for setting up a strategic guidance on the implementation of an EDIC.]*

## Article 13

### **[OPTIONAL: Advisory Board]**

1. *The {Advisory Board} shall {provide expert advice, as requested by the Assembly of Members or the Director}.*
2. *The members of the {Advisory Body} shall be appointed by the Assembly of Members for a term of {xxx} years, renewable.*
3. *The {Advisory Board} shall consist of {experts in the areas relevant to the {name} EDIC, including as needed industrial and scientific experts, as well as representatives of the user communities and other relevant groups of stakeholders}.*
4. *The Chair of the Advisory Board shall be [OPTION 1 {appointed by xxx}]]OPTION 2 {elected among its members}}]. The Rules of Procedure of the Advisory Board shall be adopted by the Assembly of Members.*

*[Example of advisory bodies: industrial advisory board; scientific advisory board; ethics advisory board. The purpose of the Advisory Board would be to provide experts and input from organisations that do not qualify to be members, in particular user communities.]*

## CHAPTER 5

### REPORTING TO THE COMMISSION

#### *Article 14*

#### **Reporting to the Commission**

1. {name} EDIC shall produce an annual activity report, containing in particular the technical, operational and financial aspects of its activities, and all elements of the implementation strategy referred to in Article 10(5)(h) of the Statutes. The report shall be approved by the Assembly of Members and transmitted to the Commission within six months from the end of the corresponding financial year. This report shall be made publicly available.
2. {name} EDIC shall also contribute to the report on the "State of the Digital Decade". The contribution shall be approved by the Assembly of Members and transmitted to the Commission. {name} EDIC shall respect instructions that may be provided by the Commission regarding this contribution, including on its the scope, template and timeline for the submission.
3. {name} EDIC shall inform the Commission of any circumstances which threaten to seriously jeopardise the achievement of {name} EDIC tasks or hinder {name} EDIC from fulfilling requirements laid down in the DDPP Decision.

## CHAPTER 6

### FINANCE, LIABILITY

#### *Article 15*

#### **Resources**

The resources of {name} EDIC shall consist of the following:

- (a) financial and non-financial contributions of members;
- (b) {OPTIONAL: host contributions;}
- (c) [OPTIONAL: funding from Union programmes;]
- (d) [OPTIONAL: grants and any other contributions from any third party, including donations from individuals and legal entities, subject to approval by the Assembly of Members;]
- (e) [OPTIONAL: profits] [to be included if commercial activities are allowed by the Statutes]

#### *Article 16*

#### **Budgetary principles, accounts and audit**

1. The financial year of {name} EDIC shall begin on 1 January and end on 31 December of each year.
2. The accounts of {name} EDIC shall be accompanied by a report on budgetary and financial management of the financial year.
3. {name} EDIC shall be subject to the requirements of the law of the country where it has its statutory seat as regards preparation, filing, auditing and publication of accounts.



## Article 17

### Tax and excise duty exemptions

#### [OPTION 1:

1. *[VAT exemptions based on Articles 143(1)(g) and 151(1)(b) of Council Directive 2006/112/EC and in accordance with Articles 50 and 51 of Council Implementing Regulation (EU) No 282/2011, shall be limited to purchases by {name} EDIC and by members of {name} EDIC which are for the official and exclusive use by {name} EDIC provided that such purchase is made solely for the non-economic activities of {name} EDIC in line with its activities.*
2. *VAT exemptions shall be limited to purchases exceeding the value of EUR 300.*
3. *Excise Duty exemptions based on Article 12 of Council Directive 2008/118/EC, shall be limited to purchases by {name} EDIC which are for the official and exclusive use by {name} EDIC provided that such purchase is made solely for the non-economic activities of {name} EDIC in line with its activities and that the purchase exceeds the value of EUR 300.]*

#### [OPTION 2:

*[{name} EDIC shall not be subject to tax and Excise Duty exemptions.]*

*[Option to be chosen in accordance with host Member States declaration by the host Member State whether it recognises the EDIC as an international body within the meaning of Articles 143, point (g) and 151(1), point (b) of Council Directive 2006/112/EC<sup>20</sup> and as international organisation within the meaning of Article 12(1), point (b), of Council Directive 2008/118/EC<sup>21</sup> ]*

## Article 18

### Liability and insurance

1. EDIC shall be liable for its debts.
2. *[OPTION 1 The financial liability of the members for the debts of the EDIC shall be limited to their respective contributions provided to the EDIC, as specified in the Annex 2].*  
*[OPTION 2 The members assume a fixed liability of {XXX} above their respective contributions] or*  
*[OPTION 3 The members assume unlimited liability for the debts of the EDIC].*
3. The Union shall not be liable for an EDIC's debts.
4. *[OPTIONAL: {name} EDIC shall take appropriate insurance to cover the following risks {insert if considered necessary}].*

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<sup>20</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

<sup>21</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

## Article 19

### Implementation strategy

1. Within [*six*] months from the entry into force of the Commission decision establishing the EDIC, the Director shall submit to the Assembly of Members draft implementation strategy.
2. The implementation strategy shall be consistent with Annex V to the Statutes, which shall serve as the outline of the implementation strategy, and shall contain:
  - a) a detailed description of actions and a timeline for their implementation,
  - b) tasks, roles and responsibilities of members [and observers],
  - c) implementation modalities
  - d) milestones targets and deliverables,
  - e) key performance indicators
  - f) the assessment of risks related to the implementation of the EDIC.
  - g) [*other elements to be added if necessary*]
3. The implementation strategy shall be adopted by the Assembly of Members acting in accordance with the procedure described in Article 10(9).
4. Each year the Director submit a report on the status of the implementation of the strategy to the Assembly of Members accompanied, if necessary, proposed amendments to the implementation strategy.
5. The report shall be approved by the Assembly of Members in accordance with the procedure described in Article 10(9) and submitted to the Commission.

## CHAPTER 7

### POLICIES

#### Article 20

#### Access Policy for users

1. {name} EDIC shall provide access to {describe the results to which access will be provided}
2. Access shall be based on: {criteria, procedure, modalities}.

#### Article 21

#### Dissemination Policy

1. {name} EDIC shall promote its results by providing targeted information to relevant audiences, in a strategic, coherent and effective manner.
2. This shall be achieved notably by {if necessary, provide specific modalities}.

#### Article 22

#### Intellectual Property Rights Policy

[*OPTION 1. Subject to the term of any contract between {name} EDIC and the users, intellectual property rights created, obtained or developed by users shall be owned by those users.*]

[*OPTION 2. {name} EDIC shall own intellectual property rights.*]

### Article 23

#### **Employment Policy**

1. {name} EDIC employment policy shall be governed by Union law and the laws of the country in which staff is employed.
2. The selection procedures for {name} EDIC staff positions shall be transparent, non-discriminatory and respect equal opportunities. Recruitment and employment shall not be discriminatory.

### Article 24

#### **Procurement policy**

1. {name} EDIC shall apply [*OPTION 1: the European Union procurement rules*] [*OPTION 2. the procurement rules of the State where {name} EDIC has its statutory seat*].

[*Alternatively*]:

2. {name} EDIC shall treat procurement candidates and tenderers equally and without discrimination, regardless whether or not they are based within the European Union. {name} EDIC procurement policy shall respect the principles of transparency, non-discrimination and competition. Detailed rules on procurement procedures and criteria shall be set out in the implementing rules.
3. Procurement by members and observers concerning {name} EDIC activities shall be done in such a way that due consideration is given to {name} EDIC needs, technical requirements and specifications issued by the relevant bodies. }

### Article 25

#### **Data Policy**

1. Generally open and non-discriminatory access to the results of the projects and their reuse shall be favoured, except where, for duly substantiated reasons, it is not feasible to do so.
2. {name} EDIC shall provide guidance (including via website) to users to ensure that research undertaken using material made accessible through {name} EDIC shall be undertaken within a framework that recognizes the rights of data owners and privacy of individuals.
3. {name} EDIC shall ensure that users agree to the terms and conditions governing access and that suitable security arrangements are in place regarding internal storage and handling.
4. {name} EDIC shall define arrangements for investigating allegations of security breaches and confidentiality disclosures regarding research data. }

## CHAPTER 8

### PROVISIONS ON DURATION, WINDING UP, DISPUTES AND SETTING-UP

#### Article 26

##### **Duration**

*[OPTION 1 {name} EDIC shall exist for an indefinite period of time.*

*[OPTION 2. {name} EDIC shall be established for an initial period of xxx years. That period shall be automatically extended for successive xxx-year period]*

*OPTION 3. {name} EDIC shall be established for an initial period of xxx years. That period shall be extended by a decision of the Assembly of Members.]*

#### Article 27

##### **Winding up**

1. The winding up of {name} EDIC shall be decided by the Assembly of Members in accordance with Article 10.
2. Without undue delay and in any event within ten days after adoption of the decision to wind up {name} EDIC, {name} EDIC shall notify the European Commission about the decision.
3. Assets remaining after payment of {name} EDIC debts shall be apportioned among the members in proportion to their accumulated annual contribution to {name} EDIC as specified in Article 9 or transferred to another legal entity to the extent that this entity continues EDIC's activities.
4. Without undue delay and in any event within ten days of the closure of the winding up procedure, {name} EDIC shall notify the Commission thereof.

#### Article 28

##### **Applicable law**

1. The setting up and the internal functioning of {name} EDIC shall be governed:
  - (a) by Union law, in particular the DDPP Decision and Commission Decision [ref. to decision establishing this EDIC]
  - (b) by the law of the Member State where the EDIC has its statutory seat in the case of matters not, or only partly, regulated by acts referred to in point (a);
  - (c) by these statutes and their implementing rules.
2. Without prejudice to the cases in which the Court of Justice of the European Union has jurisdiction under the Treaties, the law of the Member State where the EDIC has its statutory seat shall determine the competent jurisdiction for the resolution of disputes among the Members in relation to the EDIC, between the members and the EDIC, and between an EDIC and third parties.

#### Article 29

##### **Disputes**

1. Without prejudice to the cases in which the Court of Justice of the European Union has jurisdiction under the Treaties, the law of the Member State where {name} EDIC has its

statutory seat shall determine the competent jurisdiction for the resolution of disputes among the Members in relation to the EDIC, between the members and the EDIC, and between an EDIC and third parties.

2. Union legislation on jurisdiction shall apply to disputes between {name} EDIC and third parties.
3. In cases not covered by Union legislation, the law of the State where {name} EDIC has its statutory seat shall determine the competent jurisdiction for the resolution of such disputes.

### *Article 30*

#### **Amendments of the Statutes**

1. Non-essential elements of the Statutes, that is all elements of the Statutes except of those referred to in Article 17(1), points (c), (ca), (cb) and (fa) of the DDPP Decision shall be amended by decision of the Assembly of Members, subject to Article 10(9) of the Statutes. The Chair shall submit the amendments referred to in paragraph (1) to the Commission within 10 days after their adoption. The amendments shall only take effect in circumstances described in Article 17(4)) of the DDPP Decision.
2. Proposals for amendments of essential elements of the Statutes shall be adopted by decision of the Assembly of Members, subject to Article 10(9) of the Statutes. The Chair shall submit these proposals to the Commission within ten [10] days after their adoption. They shall be subject to the procedure referred to in Article 14 of the DDPP Decision.
3. The Statutes shall be kept up to date and publicly available on {name} EDIC website.

### *Article 31*

#### **Set-up provisions**

1. A first meeting of the General Assembly shall be called by the State where {name} EDIC has its statutory seat as soon as possible after the Commission decision setting up {name} EDIC takes effect.
2. Before the first meeting is held and no later than forty-five calendar days after the Commission decision setting up {name} EDIC takes effect, the relevant State shall notify the founding Members and Observers of any specific urgent legal action that needs to be taken on behalf of {name} EDIC. Unless a founding member objects within five working days after being notified, the legal action shall be carried out by a person duly authorised by the relevant State. }

## ANNEX I

### List of members, observers and their representing entities

#### Members

Country or Intergovernmental organisation	Representing entity

#### Observers

Country or Intergovernmental organisation	Representing entity

## ANNEX II

### Voting rights

[...]

## [OPTIONAL: ANNEX III

### Contributions]

[...]

## ANNEX IV

### List of essential provisions

[...]

## ANNEX V

### Multi-Country Project and the outline of the

*[to comply with Article 17(1)(b) of the DDPP Decision, this annex should contain the detailed description of the Multi-Country Project, the tasks of Members, if applicable, and indicative timeline. This Annex V should serve as an outline of the implementation strategy that should be adopted in accordance Article 19 of the Statutes following the creation of the EDIC. Proposed template of Annex V below to facilitate MS' compliance with this requirements is provided below.]*

Name of the Multi-Country Project	
Corresponding area of activity in the Annex to the DDPP Decision	
Rationale and objectives of the MCP	
Link to the DDPP general objectives and digital targets	
Detailed description of the Multi-Country Project	
Main tasks, activities and deliverables of the EDIC	

Implementation strategy, including implementation modalities	
Tasks of the EDIC members	
Indicative timeline, milestones & targets	
Indicative budget and sources of funding	
<i>[Other elements of the outline of the implementation strategy]</i>	<i>[to be provided depending on the implementation modalities of a given EDIC]</i>
Publicly available information (websites etc)	

## Part 5

### Template for the Declaration by the host Member State in accordance with Article 14(1)(d) of the DDPP Decision

*[NOTE: this declaration concerns recognition of legal personality and capacity of an EDIC and for providing equivalent treatment of an EDIC as an international body or international organisation with respect to relief from VAT and excise duties.]*

*Option 1 should be chosen by the host Member State if it recognises an EDIC as international organisation and international body (see Section 4.4 of this guidance). If this is not the case, Option 2 should be chosen.*

*In addition, only under Option 1, the host Member State may declare that it exempts EDIC from the procurement directive (see Section 4.6 of this guidance.)*

#### OPTION 1:

1. [Name of the host Member State] represented by [name of authorised authority] in view of its application for to establish [name of the EDIC] declares that [name of the EDIC] shall have legal personality and capacity under the laws and regulations of State [name of the host Member State] in accordance with the DDPP Decision;
2. [Name of the host Member State] recognises [name of the EDIC] as an international body within the meaning of Articles 143, point (g) and 151(1), point (b) of Council Directive 2006/112/EC<sup>[1]</sup> and as international organisation within the meaning of Article 12(1), point (b), of Council Directive 2008/118/EC.
3. [OPTIONAL]: [Name of the host Member State] declares that, by virtue of its status as international body and international organisation, [name of the EDIC] shall be exempted from the application of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>10</sup>, as transposed to its national law, to public procurement, as transposed to the national law of [name of the host Member State].

#### OPTION 2:

1. [Name of the host Member State] represented by [name of authorised authority] in view of its application for to establish [name of the EDIC] declares that [name of the EDIC] shall have legal personality and capacity under the laws and regulations of State [name of the host Member State] in accordance with the DDPP Decision;
2. [Name of the host Member State] does not recognise [name of the EDIC] as an international body within the meaning of Articles 143, point (g) and 151(1), point (b) of Council Directive

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<sup>10</sup> OJ L 134, 30.4.2004, p. 114 and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65.



2006/112/EC[1] and as international organisation within the meaning of Article 12(1), point (b), of Council Directive 2008/118/EC.